

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICROSOFT CORPORATION, :
: Plaintiff, :
: :
-v- : 11 Civ. 2365 (KBF)
: 11 Civ. 2648 (KBF)

DATATERN, INC.,

Defendant.

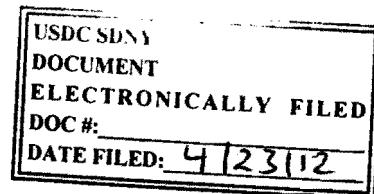
SAP AG AND SAP AMERICA, INC.

Plaintiff.

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DATATERN, INC.

Defendant:



Defendant DataTern, Inc. ("DataTern") has filed a motion for reconsideration of this Court's denial of its motion to stay or dismiss this action. Defendant's request focuses on "the first filed rule in the Second Circuit and the . . . so-called 'customer-suit exception', " which defendant argues were not addressed or considered by the Court on January 31, 2012, when it declined to stay this action in favor of suits brought by defendant in the Eastern District of Texas (the "Texas Actions"). (See DataTern, Inc's Mem. in Supp. of its Mot. for

Reconsideration on DataTern's Mot. to Stay or Dismiss at 2
("Def.'s Br.").)

Plaintiffs have notified this Court that two of the remaining three active Texas Actions have been stayed in favor of this action (see Notice of Supplemental Authority (Dkt No. 73)) and a review of the third--Datatern, Inc. v. Abbott Laboratories, et al. (2:11-cv-00203)--indicates that it too has been stayed pending this Court's decision.¹ Accordingly, DataTern's motion for reconsideration is DENIED as moot.

DataTern's motion for reconsideration also briefly touches upon the Court's prior finding of a justiciable controversy and "notes" that the scope of this action must be limited to those claims covered in the Texas Actions. (See Def.'s Br. at 1-2.) It is not clear that defendant is asking the Court to reconsider anything regarding these two issues. Assuming it is, defendant has set forth no controlling decision or overlooked facts that would alter the Court's prior conclusion. See e.g., Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). In fact, defendant either cites to authority that it had brought to this Court's attention on the underlying motion (i.e., Prasco, LLC v. Medicis Pharm. Corp., 537 F.3d 1329 (Fed. Cir. 2008)) or presents an issue that was not put before the Court on the

¹ The Court takes judicial notice of the documents filed in the Texas Actions. See Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc., 969 F.2d 1384, 1388 (2d Cir. 1992).

underlying motion (i.e., the scope of this action vis-à-vis the Texas Actions). Thus, if DataTern intended its motion for reconsideration to include these two issues, it is DENIED.

The Clerk of the Court is directed to terminate the motion at Docket No. 60.

SO ORDERED:

Dated: New York, New York
April 23, 2012



KATHERINE B. FORREST
United States District Judge